An Examination of the Role of the Courts in the Sustenance of Democratic Governance in Nigeria

*Idiat Funmilola Akande**
*Halima Doma Kutigi***

1. Introduction

The role of the courts in the sustenance of democracy cannot be over emphasized. In Nigeria, the judicial powers of the Federation and of the State are vested in the courts by virtue of the Constitution of the Federal Republic of Nigeria 1999 (hereinafter the Constitution)[1] . The courts and by the same token judicial officers, are the bedrock of social justice, thus, they constitute the bastion of democracy as the guardians of the Constitution and law. In this wise, the traditional function of the courts is to exercise judicial powers to settle disputes and declare the rights and obligations of parties under the law. Further, the role of the court may be perceived on economic, political and social basis because they contribute in an analogous manner to the development of a nation through the instrumentality of their decisions. Judicial officers therefore, have an important role to play in sustaining democracy. This paper addresses the role of the judiciary ina democratic system of governance, noting the fact that the practice of democracy is basically an emerging concept in Nigeria. Accordingly, the paper examines the extent of the role of the courts in the sustenance of democracy in Nigeria in relation to the effective discharge or otherwise of such roles; identifies those factors (if any) militating against the effective discharge of such roles; and further proffers viable measures needed for the smooth operation of the institution. In an attempt to achieve these objectives this paper considers issues such as clarification of key terms, the role of courts in the democratic governance, challenges and recommendations.

2. Conceptual Clarifications

This section seeks to clarify the key terms relevant to the title of the paper and these include meaning of terms such as "Court", "Judicial Power". and "Democratic Governance".

Meaning of Court and Judicial Power

A court is a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice[2]. Technically the judge or judges who

* (PhD) Lecturer, Faculty of Law, Public Law Department, Ahmadu Bello University, Zaria.
** (LL.M, MCIArb) Lecturer, Head of Islamic Law Department, Faculty of Law, Nasarawa State University, Keffi

1 S.6 (1) and (2) of the 1999 Constitution of Federal Republic of Nigeria (As Amended)

2 Garner, B.A. Black's Law Dictionary (2009) 9th Edition, Thomson Reuters Publication, U.S.A. p.405

sit on such a governmental body are said to be at the bench[3]. A court could also be defined as a permanently organized body, with independent judicial powers defined by law, meeting at a time and place fixed by law for the judicial public administration of justice[4]. In the light of this, Hon. Justice Philip NnaemekaAgu JSC (Rtd) observed:

> The courts are in fact the arms of government mostly designed and expected to do justice according to law – judicial justice. On the abandonment of the concept of justice as the interest of the stronger, humanity had no alternative but to turn to the courts so as to fill up what would have been a vacuum. Men had to turn to the courts as the fora for public administration of justice. Courts try and punish criminals; the enemies of peace and tranquility in society. They adjudicate on civil disputes between citizens interest or between the citizen and the state. They are constituted and intended to be the last hope of the weaker in society[5].

In order to effectively function as intended in the above paragraphs the Constitution vests the court with judicial powers as follows:

> The judicial powers of the Federation shall be vested in the Courts to which this section relates, being courts established for the Federation.[6]
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> The judicial powers of the state shall be vested in the courts to which this section relates, being courts established subject as provided by this Constitution, for a State".[7]

The term "judicial powers" stated in the above provisions has been defined to be the power which every sovereign authority must of necessity have to decide controversies between its subject or between itself and its subject whether the right relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action[8].

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3 Ibid

4 Ibid, see also, William J. Hughes (1931), Federal practice, jurisdiction and procedure, U.S.A. p.8

5 See generally Uwadineke K. and Silvia I (Lecturers, Faculty of Law, Nnamdi Azikwe University, Awka, Anambra State) (2008) The Role of the Judiciary in Good Governance: Trials and Travails. Nigeria Law Teachers Conference, Anyamba, Kogi State, pp.1-24 particularly p.10

6 S.6 (1) of the Constitution Federal Republic of Nigeria (CFRN), 1999 (As amended)

7 Ibid S.6(2)

8 Uwadineke K. and Silvia I ., Op cit. p.5

The term "judicial power" must be distinguished from "jurisdiction". Judicial powers encompasses the totality or entirely of powers exercised by the courts. "Jurisdiction on the other hand represent the authority which a court has to decide matters before it or to take cognizance of matters presented before it (or in a formal way) for its decision"[9]. In case of *Nokoprise Int. Co. Ltd vs Dobest Trading Corp*[10] the term "judicial powers" is summarized to mean:

a. The authority which a man hath by a power to do justice in a case of complaint made before him.
b. In it narrow sense, the limits which are imposed upon the power of a validly constituted court to hear and determine issues between persons seeking a avail themselves of it process by reference to
   i. The subject matter of the issue or
   ii. The persons between whom the issue is joined or
   iii. The kind of relief sought
c. In its wider sense, the way in which the court will exercise the power to hear and determine the issues which fall within its jurisdiction or as to the circumstances in which it will grant a particular kind of relief which it has jurisdiction to grant including it settled practice to refuse to exercise such powers or to grant such relief in particular circumstances.

Discernible from the above is the fact that no court singly has the jurisdiction to exercise all the judicial powers assigned to the judicature. Pro-actively, the jurisdiction of courts established under the constitution and endowed with judicial powers was boosted by the provisions of the Constitution in S.4 (8) and S.6 (6) (a) & (b)[11]. These provisions not only apply to constitutionally established court as seen in S.6 (5) but to all courts and tribunals established by law or to be so established.[12]

The courts contemplated by the Constitution as the repository or judicial powers are those listed in S. 6(5) as follows:

a. the Supreme Court of Nigeria
b. the Court of Appeal

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9 A.G. Federation v. A.G. Abia and 35 ors (2001) 7 Sc. (pt. 1) 100

10 (1997) 9 NWLR (pt. 520) 336

11 6(6)(a) provides that judicial powers vested in the constitution "shall extend, notwithstanding anything to the contrary in this constitution to all inherent powers and sanctions of a court of law"; while Section 6(6)(b) further provides that such judicial powers "shall extend to all matters between persons or between governments or authority and any person in Nigeria, and to all actions and proceedings, relating thereto for the determination of any question as to the civil rights and obligations of that person and accordingly, the doctrine of state immunity in respect of liability in tort no longer applies"

12 Uwadineke K. and Silvia I., Op Cit. pp.10-12.

c. the Federal High Court including that of FCT
d. the High Court of the FCT, Abuja
e. a High Court of a State
f. the Sharia Court of Appeal of the Federal Capital Territory
g. a Sharia Court of Appeal of a State
h. the Customary Court of Appeal of FCT, Abuja
i. a Customary Court of Appeal of a State
j. Such other Courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and
k. Such other Courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

The Courts mentioned in S.6(5) a-i are identified as superior courts of records in accordance with the provision of S.6(3), thus, the Court referred to in items j-k if and when created will be of the same status. Section 254C (1-6) of the 1999 Constitution (as altered) provides for the National Industrial Court, and recognizes it as a superior court of record. It must be noted that the definition given by the National Judicial Institute is wider than the one provided under the Constitution by including Magistrates Courts in a State, Area Courts and Customary Courts.[13] Also, it must be noted that, the court cannot be divested of judicial power without constitutional amendment especially in the light of S.4(8) of the Constitution and in fact even the legislature cannot by any means usurp the judicial powers by means of legislation as shown in the case of *Ojukwu vs Governor Lagos State.*[14] In this case the Supreme Court of Nigeria observed:

> .....it is a very serious matter for anyone to flout a positive order of the court and proceed to taunt the court further by seeking a remedy in a higher court while still in contempt of the lower court. It is more serious when the act of flouting the order of the court, the contempt of the court is by the executive. Under the constitution, the executive, the legislature (while it lasts) are equal partners in the running of a successful government... the organs wield these powers and one must never exist in sabotage of the other or else there is chaos. Indeed there will be no federal government. I think, for one organ, and more especially the executive, which holds all the physical powers to put up itself in sabotage or deliberate contempt of the other is to stage an executive subversion of the constitution it is to uphold. Executive lawlessness is tantamount to a deliberate violation of the constitution when the executive is the military

13 Section 17, National Judicial Institute Act CAP. N55 L.F.N. 2004
14 (1986) 1 NWLR (pt. 18) 621 at 633-634

> government which blends both the executive and the legislative together and which permits the judiciary to co-exist with it in the administration of the country, then it is more serious than imagined. The essence of the rule of law is that it should never operate under the rule of force or fear. To use force to effect an act, and while under the Marshall of that force seek the court's equity is an attempt to infuse timidity into court and operate a sabotage of the cherished rule of law. It must never be[15]

In addition to the Courts, The Constitution also recognizes administrative or statutory tribunals that are set up to handle certain matters that arise within the polity. They are targeted at specific issues and their jurisdiction is confined or contained within the specific matter which it is meant to deal with. In most cases, these tribunals are also backed by specific laws enacted by the legislature to guide and regulate its functions and proceedings. Most of these tribunals have quasi-judicial functions. An example of such, is the Elections Tribunals, Tribunals of Enquiry, Military Court Marshal, Code of Conduct Tribunal (CCT), etc.

Meaning of Democratic Governance

Literarily, "democracy" as the catchword or contemporary political discourse is the sword that resonates in people's minds and springs from their lips as they struggle for freedom and a better way of life, it is the word which meaning we must discern if to be of any use in guiding political, analysis and practice.[16] Another commonly accepted image of democracy identifies it, with majority rule. Any governing body that makes decisions by combining the votes of more than half of those eligible and present is said to be democratic, whether that majority emerges within an electorate, a parliament, a committee, a city council, or a party caucus. For exceptional purposes (e.g., amending the constitution or expelling a member), "qualified majorities" of more than 50 per cent may be required, but few would deny that democracy must involve some means of aggregating the equal preferences of individuals.[17]

However, in the academic sphere, democracy is defined as - "that form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation, as distinguished from a monarchy, aristocracy or oligarchy.[18] Further, democracy

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15 Ibid

16 Schmitier, P. C. and KARL, T.N in their article – "What Democracy is... And is Not" in the Journal - Democracy Theory and Practice - UNCESCO, John Hopkins University Press, Moscow, Russian Federation, - p.37. See. also Journal of Democracy, Vol. 2, No. 3, summer 1991, p. 75 - 88.

17 Ibid p. 41.

18 BLACK, Henry - *Black's Law Dictionary*, 6th Edition, West Publishing Company, U.S.A

has also been defined as a - "form of government in which the major decisions of government or the direction of policy behind these decisions rest directly or indirectly on the freely given consent of the majority of the adults governed".[19] According to Schatts - Cheider, E.E., democracy is – "a competitive political system in which competitive leaders and organizations define the alternatives of public policy in such away that the public can participate in the decision making process."[20] However, what is important about the above given definitions (both literarily and academic wise), is that, democracy, is about the people and the exercise of their free will to decide a government of their choice. Thus, Abraham Lincoln defines democracy as - "government of the people by the people for the people."[21] Like all regimes, democracies depend upon the presence of rulers, persons who occupy specialized authority roles and can give legitimate commands to others. What distinguishes democratic rulers from non-democratic ones are the norms that condition how the former come to power and the practices that hold them accountable for their actions.[22]

By virtue of the foregoing, it is submitted that, democracy could be defined as, a form of government in which major decisions of, government or the direction of the policy behind these decisions are made directly or indirectly through elections at definite intervals by the freely given consent of the majority of the adults governed. Democracy therefore, entails popular participation of people in governance, freely given consent, majority rule, free and fair elections, the rule of law, the independence of the judiciary[23], autonomous of mass media and gender empowerment in order to ensure that the attributes of democracy are achieved.

Thus, the pervading atmosphere in a democracy must be related to liberty, equality of opportunity, and freedom. Furthermore, government should be the government "for the people" – not for an aristocracy, or a select group; not for the wielders of political power; not for the few and select elites at the apex of the five pyramids of power in society; but for the "common man". In a democracy. the people own the government instead of the other way around, thus there is a constant relationship and dialogue between the rulers and the ruled, through which a link is established between the judiciary and democracy. Thus, the role of

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19 The Encyclopedia American, International Edition, by Americana Corporations International Headquarters, Dandury, 1978; p. 690.

20 See SHISHI, J.M.; ISAH, Yakubu and KANA, A. A. in their article - "Globalization Democracy and Good Governance in Nigeria- Best Practices" p.20.

21 OLUYEDE, P.A.O. - Constitutional Law in Nigeria. 1st Edition, by Evans Brothers (Nigerian Publishers) Limited, Ibadan, 1992. p. 15.

22 SCHMITTER, P. C. and KARL, T.N. in their article - "What Democracy is ... And is Not", op. cit.

23 Shishi, J.M.; Isah, Yakubu and Kana, A. A. Op. Cit. p.20.

the judiciary in the sustenance of democracy is very important[24]. For example, if the law creates equal rights (which is the intent of democracy) and these rights are not equally enjoyed then, the quarrel is not with law but with those interpreting and enforcing the law (the judiciary and executive).

3. The Role of the Court in the Sustenance of Democratic Governance

The social order of the Nigeria as a Nation is founded in the ideals of freedom, equality and justice,[25] and the institutional machinery for the attainment of justice in any society is law through the instrumentality of the courts in the course of determining the rights and duties of parties before them in the resolution of conflicts. In furtherance of the need to do justice in the Nigerian society, the Constitution clearly states:[26]

(a) every citizen shall have equality of rights, obligations and opportunities before the law;
(b) the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced;
(c) governmental actions shall be humane;
(d) exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented; and
(e) the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.

In view of the above the role of the court in the sustenance of democratic governance are as follows:

The Court as a Tool for the Maintenance of Peace, Law and Order

This centres on the traditional role of the court to maintenance peace, law and order through the resolution of disputes arising from various interactions between citizens. This is true particularly today where there is an increase in population and advancement in transportation and communication technology bringing people closer to each other and thus attracting more conflicts. It is the duty of the courts to adjudicate with justice and fairness between the parties where conflict arises, and this is very important in a democratic set-up because democracy and justice are twin bed fellows. Man's capacity for justice makes democracy possible, but man's inclination makes democracy very necessary... justice thus seems to be most acceptable credential of democracy. There seems to be an umbilical cord

[24] Hon. Justice ChukwudifuOputa, The Independence of Judiciary: Myth or Reality, in *The Judicial and Democracy in Nigeria*. National Orientation Agency, 1998. p.170
[25] S.17(1), CFRN, Op. Cit.
[26] Ibid. S.17(2).

linking democracy and justice. If that cord snaps the result will be injustice. It will also be a failure of democracy.[27]

Clearly, in the case of *RabboDamina vs The State* the court in the maintenance of peace, law and order pointed out that if it becomes necessary that a point or points arising for determination in a case should be further clarified by evidence after the close of trial, it is the duty of the trial judge to invite the parties to supply such evidence or explain such point or points and it will be wrong for the court to proceed to its own views for matters on which there should be but which there was no evidence before the court."[28]

Thus, the relationship between the judiciary and democracy lies in the truism that there can be no viable democracy without justice, which is usually the finished product of an efficient, courageous and independent judiciary. Therefore, for the promotion of a viable democracy, the judiciary must be firm, direct and truthful in order to retain public confidence in their traditional role. On this note, Hon. Justice Oputa emphasized that judges must do their best to retain public confidence in the administration of justice, he observed:

> ... to retain public confidence in the system, the administration of justice in our courts should, have all things else, be pure, incorruptible and just, otherwise we dispense the counterfeit. Justice in our courts should never become a marketable commodity blatantly auctioned, with the hammer going down to the highest bidder. Such an auction sale of justice defaces, disfigures and debases the beautiful effigy of elegant and relentless justice. Our judges should realise that it is not for fun that they are addressed as Honourable justice so, so and so. They should also realise that justice is an attribute of God himself[29]

He continued:

> To share in this divine attribute our judges should at all cost ensure that in our courts, justice is not mocked, nor depreciated, nor disfigured, nor diluted, nor prostituted, nor in any way debased, but rather, that elevated on her proud and lofty throne, she sits visibly elegant and dignified, a comfort and an asylum to the oppressed, a sure and guaranteed hope for the innocent, a chilling terror to the

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27 Hon. Justice Oputa, C., "The Independence of the Judiciary, Myth or Realty," in the Judiciary and Democracy Nigeria, (edited), by Prof. Elo Amucheazi and Hon. Justice OlajideOlatawuna, National Orientation Agency, 1998, p. 169.

28 [1995] 8 NWLR (Pt. 415) 513. See also the case of Bornu Holding Company Ltd. v. Hassan Bogocco (1971)1 All NLR 324 where the court upheld the same position.

29 Ibid.

> malignant and the vile, and a discouragement to evil doing. When we achieve the above objectives then the administration of justice in our courts becomes rich in the inheritance it bequeaths, pious in the example it testifies; pure, precious and imperishable in the hope it inspires. This should be the stuff, of which and from which, our people's confidence in the court system should be made."[30] Thus, as a way forward to democratic consolidation there must be a free and fair electoral system by an independent and incorruptible electoral commission to be supported by an independent, firm and fearless judiciary to guarantee the rule of law.

Therefore, where the judiciary ceases to be firm, direct and truthful, there is bound to be a rape of all known democratic norms and principles. Again, where the judiciary is not firm it would lead to wide scale discontentment among the Nigerian political class, especially those who feel they have been denied or are about to be denied the fruit of their hard labour on the political turf by the meddlesomeness of a particular ruling party. The prevalence of these events in a democratic set up would simply imply that the government of the people is no longer for the people and in fact where the judiciary is not firm the security of the citizens will not be assured. On this score, the independence of the judiciary is paramount to the attainment of the attribute of firmness and truthfulness.

On a positive note, it is commendable that in the recognition of the foregoing, the Supreme Court of Nigeria has demonstrated uncommon zeal in driving Nigeria along the path of a true democracy and the rule of law as against every form of arbitrariness. This is demonstrated in many cases of recent,[31] where the Supreme Court reinforced the confidence of the common man in democracy by making the election more free and fair through delivering transparent, firm and fair judgements.

The Court as a Tool for Security of Persons and Properties

The Constitution and other laws[32] identify certain rights that must not be breach. Such rights are relatively justified to protect persons and properties from intended

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30 OPUTA, C., Judicial Ethics, Law, and the Judiciary; Judicial Lectures: Continuing Education for the Judiciary, MIJ, 1990, p.34.

31 For examples Hon. Muyiwalnakoju and 17 others V. Hon. Abraham Adeleke (speaker) and 4 others. (2007) All FWLR (Pt. 353) p. 3.; Atiku Abubakar and Action Congress v. The Independent Electoral Commission (INEC); RotimiAmaechi v. Peoples Democratic Party (PDP) and Celestine Omehia and others. "The News" Magazine, November 12, 2007, P. 19. Action Congress and Alhaji Ibrahim Bapetel and others v. INEC and others. The "Daily Trust", volume 17, Friday 16th November, 2007, p. 1.

32 For example, Sections 33 – 44 all relating to fundamental rights of persons in chapter iv; the Penal Code Law, 1960 and Criminal Code Act 1916, applicable to the Northern and Southern part of Nigeria respectively.

and unintended violence by some disorderly persons in the society. Thus, the Constitution provides that, the security and welfare of the people shall be the primary purpose and responsibility of government.[33] In furtherance of this constitutional provision, it is the duty of the court to ensure the security of persons and properties within the community where such matter arises before it. The identification of breaches of rights and duties are determined by the courts on behalf of the State by ensuring that offenders are punished within the ambit of law. It must be noted that the state is the custodian of the people's rights and as such people who breach such rights must be punished by the court on behalf of the state. In this regard, the court ensures security of persons and properties through punishment so as to deter others from committing the same offence and at the same time reforming an accused person.

The Court as a Tool for Enhancement of Human Rights Protection

Democracy itself belongs to the human rights family, therefore, the two go together and the success of anyone of them leads to the achievement of the other. Evidently, the success of any democracy is no doubt measured by the level of the respect for human dignity and protection of human rights in their civil, political, economic cultural, environmental and developmental contents in the country.

The point should be made here that human rights thrive well and grow only under a culture of democracy. To buttress this assertion, the learned. Honourable Justice C.A. Oputa made the following statements on the occasion of the second Idigbe Memorial Lectures at the University of Benin:[34]

> The ideal political climate and culture necessary for the recognition and enforcement of human rights anywhere must be a government and a political system that respects popular opinion. Absolutism and totalitarianism had never been the climate or culture for the growth of human rights. The political climate and culture for the recognition and enforcement of human rights must be a democratic society.[35]

In view of the foregoing, it is submitted that the strength of human rights ideals is equally the strength of democracy, and the institution responsible for the assurance of these ideals is the court.

Ensuring Popular Participation and Transparency in Constitution Making

In the sustenance of democracy, it is the duty of the court *ab initio*to ensures the general recognition and acceptance of the constitution in order to foster national

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33 Section 14(2)(b) of CFRN

34 OBE, A.I. and YERIMA, T.F., (Edited) Law, Justice and Good Governance, Faculty of Law, University of Ado – Ekiti, Nigeria, 2003, P. 221.

35 Ibid.

unity and cooperation which will further strengthen its supremacy. To achieve this aim, there must be popular participation and transparency in constitution making. This is significant because the constitution is the guiding principle and spirit for governing inter-personal and inter state relations in a polity, therefore, the process of bringing it into existence must be as democratic as possible so that, it gains popular acceptability. Such process must be inclusive rather than exclusive. This makes it imperative to have as broad a representation of the people as far as possible, both in drafting the constitution and in debating and passing the draft into an acceptable piece of legislation.

Presently popular participation and transparency in constitutional making is of utmost importance because a review of the Nigerian experience with constitution making shows that the process has been elitist rather than popular and much more exclusive than inclusive, which makes it unsuitable for the present democratic consolidation. It must be remembered that our past constitutions and even the present one have been initiated, controlled, and directed by either colonial masters or military rulers, and, especially under military rule, the process of constitution making had mostly been in the context of a carefully controlled and manipulative political atmosphere, thereby forbidding citizens to contribute ideas and opinions in shaping the constitutions. Of all such constitutions, the process of making the 1979 constitution was relatively more open and democratic than the subsequent ones in 1989, and 1999. There was more open and genuine debate on the 1979 constitution, and as such it was less controlled and manipulated by an incumbent military regime.[36]

The Promotion and Protection of the Right to Freedom of Information

The right to Freedom of Information in other words expressed as "the right to know" must be established in any democratic consolidation because information is essential to democracy which requires effective participation at all levels. In other words, effective participation at all levels will fail and make nonsense of democracy without the public right to know being upheld in the absence of an overriding public interest in secrecy. For example, voting is not simply a technical function. The electorate must have access to information, or elections to fulfill their aspirations, which is described under international law and national constitutions as ensuring that the will of the people shall be the basis of the authority of the government."[37]

The same is true of participation at all levels, it is not possible for example, to provide useful input to a policy process without access to the policy itself as well as for the reasons it is being proposed. Accordingly, based on the significance of

[36] SHISHI, J.M.; ISAH, Yakubu and KANA, A. A. Op. Cit. p.21.

[37] Article 20(3), UDHR; See also, the general practice of Article 25 of ICCPR and Article 13 of ACHPR which postulate the same meaning; S. 14(2)a CFRN, 1999.

the right to know as an efficient tool for democratic consolidation, the international Human Rights NGO, Article 19, Global Campaign for free Expression, has described information as "the oxygen of democracy."[38] Therefore, in view of the above it is the duty of the court as the pinnacle of justice to ensure that the fundamental value underpinning the right to know is observed through the instrumentality of its decisions. The right to know deals with the principle of maximum disclosure, which establishes a presumption that all information concerning public bodies should be subject to disclosure unless there is an overriding public interest justification for non-disclosure. Thus, in the absence of the respect for the right to know, which includes, the right to freedom of expression, the right to seek, receive and impact information and ideas, it is not possible to exercise the right to vote which lies at the heart of the very notion of democracy.

The Court as a Tool for Economic Emancipation

The court has a vital role to play in economic progress and development in every jurisdiction, and this has noted in a recent article entitled *"The Role of Law in China's Economic Development*[39]," where the authors observed, inter alia, that the economic reform and transformation in China was marked by a conscious recognition from the beginning that law had a new and important role to play in the process. Thus, Nigeria as an emerging nation with developing institutions and governance structures need investors' support in order to assist in building a stable business environment. Investors must be confident that they may resort to a non-aligned court for advice and representation in their disputes with any party or government no matter how well connected they may be, and their confidence is likely to deteriorate where the bench is not reliable and lacks the ability to determine the principles of law guiding the conduct of a trade in the process of adjudication.

In other words, the existence of a stable judiciary gives investors rest of mind in cases of conflict which may arise from time to time in the course of transactions. For this purpose, there is also the need for an efficient bar which will present the law as it is before the court and it will be left for the court to evaluate appropriately. In this regard, Lord Alexander, while addressing the Malaysian Bar in 1991 observed as follows:

> The ability to conduct trade within the boundaries for law and to know that a settled system of law is available to resolve differences is crucial to economic progress. The economic progress made

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38 LADAN M.T., The Right of Public to know, New Nigeria, No. 13, 256, Monday April 24, 2006 P. 10.

39 Baderin M., *Law and Development in Africa: Towards a New Approach*, Nigerian Institute of Advanced Legal Studies, Maiden Edition 2011, p.4

> within your country within recent years with improved opportunities for employment and higher standards of living is most good to see. Your systems of law and your professional work, are not just an adjunct grafted on to the commerce of society, but an essential element in its development, legal rights do not impede economic progress, they buttress.[40]

In line with the above observation, it could be submitted that the role of both the bar and the bench in economic emancipation is to educate and protect the citizens on the legal rationale of transactions and the resultant consequence of breaching the agreements of legal transactions. It is also the role of both the bar and the bench to educate parties who manipulate the market in order to create artificial scarcity, on the misuse of the power of trade associations.

The Court as a Tool for the Protection of the Environment

Environmental protection and preservation has become pressing and requires much more attention than has been given in the past. The trend has been picked up in international and regional conventions but requires to be clearly specified and made obligatory by national legislations. Environmental protection aims at ensuring that the environment and natural resources are used to ensure the maximum benefit for the present and future generations (that is sustainable development). Conservation should be treated, as an integral aspect of planning and the implication of developing the environment should be carefully studied and taken account of. There is need to notify the public concerning activities that might affect the environment and due process should be retained for damages suffered. Strict liability should be imposed on individuals for activities that cause serious damage to the environment. The World Commission on Environment and Development (WCED) therefore suggested that:

> States shall take all reasonable precautionary measures to limit the risk when carrying out or permitting certain dangerous but beneficial activities and shall ensure that compensation is provided, should substantial transboundary harm occur even when the activities were not known to be harmful at the time they were undertaken.[41]

By virtue of the foregoing therefore, there is the need to use law as a vehicle for the regulation, management, and protection of the environment by the

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[40] Obe, A.I.A and Yerima, T.F. (edit) Law, Justice and Good Governance, Faculty of Law, University of Ado-Ekiti, Nigeria, 2003, p.8.

[41] Summary of the proposed Legal Principles for Environmental Protection and sustainable Development Expert Group on Environmental Law, 1987.

instrumentality of the decisions of the courts. This will serve as a mechanism for creating awareness for the protection of the environment in the Nigeria society.

Enhancing Gender Empowerment

It is the duty of the court to guarantee gender standard principle through their decisions. This is because for a government to merit an appellation of democracy there should be a provision for equitable job opportunities for both men and women with relevant competence and abilities so as to enable them participate in key aspects of social life and public affairs. Here, it must be stressed that the intent is not to use gender as an instrument of fraud or to suppress justice but to make women have a sense of belonging since democratic governance prohibits exclusion. Thus in the case of Aisha Al-Hassan vs Darius Ishaku[42] the Supreme Court dismissed the appeal of Aisha Alhassan, Taraba state governorship aspirant of the All Progressives Congress (APC)[43], for lacking in merit, on the 22nd February 2016 and held that the case prima-facie is based on pre-election matter and as such Alhassan, not being a member PDP cannot bring an action to contest the pre-election candidature of Ishaku.[44]Although this decision was a disappointment for many women in Nigeria, it is a clear instance of justice without bias on gender principle, hence, ensuring gender equality does not mean that the court should not observe the rule of law.

Prevention of Abuse of Powers

A democratic society needs a court system; that fosters conciliation and governmental systems that include rather than exclude. This is because sovereignty resides with the citizens, who delegate power only to solve problems of common concern. A democracy must above all respect the distinction between the private and public spheres with a view to making sure that public interest prevails over private interests (whether group or individual) all of which need to be addressed by the court in good faith. In doing so, the court itself must be guided by the principle of law in order not to exceed its power as shown in the case of *Oteju and Others vs Oluguna and Others,*[45]where the Supreme Court had an occasion to determine whether or not the learned trial Judge usurped his judicial functions as an impartial arbiter during the conduct of the trial. Counsel to the respondents submitted that these allegations arose from counsel to the appellants due to lack of understanding of the true functions of a trial Judge in a civil matter. On this note the Supreme Court held *inter alia* that, it is clearly within the functions of the trial Judge, as arbiter to put questions to witnesses for

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42 Taraba tussle: Alhassan loses, Supreme Court Ishaka validly nominated, www.thenewsnigeria.com.ng/2015/12/taraba. Accessed on 27/02/2016.

43 Now Minister of Women affairs

44 Taraba tussle, op cit. See also sections 31, 32, 33 and 87 of Electoral Act, 2010

45 (1992) 8 NWLR (Pt. 262) 752

purposes of clarification or to resolve any ambiguities.[46] Again, in order to forestall abuse in the course of appropriation of power, there should be operational principle of separation of powers amongst the conventional tripartite organs of the state. This means that, the executive, legislative and judicial organs must exist and operate as relatively autonomous bodies so as to foreclose extraneous intrusion that may negate the principles of social justice and equity.[47]

Poverty Alleviation

It is the duty of courts to deal with substantial issues of Nigerian development so as to raise the standard of living of the citizens in order to improve citizen's chances of participation in public affairs as intended by democracy. In this regard the court in the case of *Miss Helen Oniwo v Mr Feli' Owabie*[48], while playing the role of poverty eradication maintained that even the plea of *non est factum*[49] cannot be sustained in extraneous issues such as unemployment, poverty alleviation and squander-mania[50]in order to encourage the business atmosphere in the polity. The role of the court in poverty alleviation is very fundamental because no amount of World Bank and IMF assisted democratic education or poverty alleviation can address the situation unless the court pioneers these efforts through its decisions. For example, one can imagine a democratic setup where a citizen is given ₦200 to vote for a particular person or party. Where eventually the same person or party wins the election, where then is the exercise of the right of free choice and where lies the basis for accountability? No doubt, such a person or party has nothing to offer because no promise was made and the basis of his victory was on money consideration. This practice is no known to the western world who offer World Bank and IMF assisted democratic education and poverty alleviation programme, rather it is peculiar local standard, which the court must address through its decisions.

4. Challenges Impeding the Courts in Nigeria

In the course of discharging the roles identified above, the court is faced with following difficulties which must be addressed in the interest of justice and democracy:

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46 Ibid p763. The court alsoreferred to the cases of Onibudo vs Akibu (1982) 7 S.C. 60; Kotoye vs Central Bank of Aigeria (1989) 1 NWLR (Pt.98) 419; Adigun vs Attorney General Oyo State (1987) 1 NWLR (Pt. 53) 678; Okoduwa vs The State (1988) 2 NWLR (Pt. 75) 201 and Ikenyi vs Ofure (1985) 2 NWLR (Pt.58) 3

47 Article 19, UDHR 1948.

48 Reported case SUIT NO: PHC/588/2003

49 A method whereby a signatory to a contract can invalidate it by showing that his signature to the contract was made unintentionally or without full understanding of the implication.

50 *Oniwo vs Mr Feli' Owabie*, Op. Cit. p.23.

Lack of Independence

An independent judiciary is an indispensable prerequisite of a democratic governance; thus, without judicial independence, no judge however brilliant, hardworking, and well prepared by qualities of heart, mind and professional training can give full effect to the enduring values enshrined in our Constitution, or even to do justice to justice.[51] Where the judiciary is not independent, it means that the government of the people is no longer for the people and in fact where the judiciary is not firm the security of the citizens cannot be assured. On this score, the independence of the judiciary is paramount to the attainment of the attribute of firmness and truthfulness. Generally, of recent issues surrounding independence of judiciary have improved yet full independence of judiciary has not been achieved considering issues such as undue executive pressure and control; and subtle manipulation from time to time.

Ouster Clauses in the Constitution

Ouster clauses are provisions in the statutes that take away or purport to take away the jurisdiction of a competent court of law. The legislature seeks by the enactment of ouster clauses, to deny the court the power of judicial review in respect of the matter in which its jurisdiction has been ousted[52]., Thus an ouster clause is used as a weapon to curtail the jurisdiction of the court by rendering a matter to be non-justiciable before the court[53]. The implication of this is that the court cannot make any meaningful contribution with respect to certain matters brought before it, thereby denying litigants judicial assistance. At the initial stage of the National polity in Nigeria, most of the ouster clauses were based on the areas of chieftaincy matters. The ability of the courts to exercise powers or jurisdictions in this area was further restricted by the legitimacy given to these ouster provisions of the Constitution[54]. Thus, The Supreme Court of Nigeria in the case of *Enwezor v Onyejekwe*[55]gave effect to ouster clauses by not exercising jurisdiction in chieftaincy matters under section 158(4)(a) and 161 (3) of the 1963 Constitution. The Supreme Court also maintained the same view in the case of *Adeyeye v Adeboye*[56] .

The return to democratic government and the coming into effect of the

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51 Ibid

52 See Alabi M.O. A., *The Supreme Court in the Nigerian Political System 1963-1997*, Demyax Press Ltd, Nigeria, 2002, at 244.

53 The clause may sometimes confer the determination of such disputes to the legislature or executive or any other body.

54 Republican Constitution of 1963

55 (1964) NSCC 9

56 (1987) NSCC 1084. Here, the Supreme Court decided that section 11(a) of the Chiefs (Appointment and Deposition) Law of the Northern Nigeria and section 78(6) of the Constitution of the Northern Nigeria,1963 ousted the Court's jurisdiction with respect to chieftaincy affairs.

Constitution of the Federal Republic of Nigeria, 1979 enhanced judicial powers by recognizing judicial review prohibiting the enactment of ouster clauses by the legislature.[57] However, despite the prohibition of ouster clauses by the Constitution and the powers of judicial review provided for in the Constitution, the Constitution itself provided a number of ouster clauses taking away the jurisdiction of the courts in certain aspects relating to inter-governmental powers and functions. The notable ones are section 170(10) of the 1979 Constitution which deals with impeachment proceedings[58]; section 6(6) (c) and (d) which deal with any questions relating to matters that touch on the fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the Constitution.

It is submitted that ouster clauses do not serve the cause of justice since they preclude the courts from hearing and deciding cases on their merits. This could encourage injustice, undemocratic practices, and ultimately bad governance. However, scholars have argued that since the ultimate powers of interpretation of the Constitution or the statutes rests in the court[59], it then means that the ability to curtail the powers of the court depends on the extent to which the court is prepared to allow the constraint of its powers by the legislature. It therefore follows that in order to effectively discharge its role in the sustenance of democratic governance in Nigeria, every court must jealously guard its jurisdiction and save it from being unnecessarily curtailed.

An Inefficient Police Force

The Nigeria Police Force plays a great role in the administration of justice, particularly in the prevention and detection of crime, thus an unguided police force will fail the court in the administration of justice. Therefore, a poor policing standard is a factor which could militate against the effective performance of the court in the discharge of its role. No doubt, the Criminal Justice Act[60] has addressed some of these problems clearly bothering on procedural rules, but there

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57 Section 4(8) of the Constitution of the Federal Republic of Nigeria, 1979 precludes the National Assembly or the State House of Assembly shall not enact any law which ousts or purports to oust the jurisdiction of the Court or judicial Tribunal established by law.

58 Balarabe Musa v Auta Hamza (1982) NSCC 219.Here the Court of Appeal refused to review the decision of the Kaduna State House of Assembly in relation to the impeachment of the governor of the State despite huge allegations of procedural irregularity and non compliance with the provision of the Constitution. The Court was of the view that the jurisdiction of the courts was effectively ousted by section 170(10) of the 1979 Constitution. Unfortunately, the Supreme Court did not have the opportunity of interpreting this provision of the Constitution at this point in time.

59 Sambo AndAbdulkadir "Ouster Clauses, Judicial Review and Good Governance: An Expository Study of The Experience in Nigeria and Malaysia" *OIDA International Journal of Sustainable Development* 05: 09 (2012) <*http//* OIDA-Intl-Journal-Sustainable-Dev.html> accessed 8/3/17

60 Criminal Justice Act May 2015

is still the need for measures to be taken for the enforcement of the provisions of the Act with caution on the part of the police. In the light of this Broadlley observed as follows:

> preservation of law and order and the prevention and detection of crime are matters of great importance to the maintenance of organized government in democratic governance. But it is equally important that these concerns should not be used to justify equipping the police with more power than it is absolutely necessary, for every power conferred on police officers inevitable means a corresponding reduction in the liberty of the individual. It is difficult to exaggerate the central importance of personal liberty in a free and democratic society.[61]

An Inefficient Bar

The duty of a legal practitioner is crucial towards the actualization of the roles of the court identified above. This is because the bar cannot be separated from the bench in adjudication processes. No doubt, the bar comprising the legal practitioners in a case lead the bench in the projection of facts and principles of law relevant in a particular case before the court. In this wise, any misguidance whether fraudulently or innocently will derail the court in the actualization of the ideals of justice. Bearing that in mind, the paramount importance of justice in the Nigerian society becomes much more pronounced when it is realized that justice is indispensably necessary to the sustenance of the nation's nascent democracy. Thus, Hon. Justice Fatai Williams, CJN (as he then was) in the case of Senator *Adesanya v President of Nigeria*[62] observed as follows: *"If we are to keep democracy, there must be one commandment: thou shall not ration justice."*[63]

In sum, a society that is denied justice cannot be democratic. This is because democracy connotes among other things, justice for all and sundry without an iota of discrimination. With regards to the commitment of legal practitioners to project justice in the society, the great judge Lord Denning in the case of Rondel vs Woisley,[64] observed as follows:

> ...He must accept the brief and do all he honorably can on behalf of his client. I say ALL HE HONORABLY CAN because his duty is paramount. It is a mistake to suppose that he is the mouth piece of his client to say what he wants, or his tool to do what he directs. He is none of these things, he owes allegiance to a higher cause. It

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61 Broadley A.W. and Ewing K.D. (2007) Constitution and Administrative Law, Bell and Bain Ltd, Glasgow. p. 476.

62 (1980) 2 NCLR part 358.

63 Ibid, p.373.

64 (1967) 1 QB 443.

> is the cause of truth and justice. He must not consciously mistake facts. He must not unjustly make a charge of fraud that is without evidence to support it. He must produce all relevant authorities, even those that are fatal to his case. He must disregard the most specific instructions of his client if they conflict with his duty to court. The code which requires a barrister to do all these is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and he is subject to its discipline. But he cannot be sued in a court of law. Such being his duty to the court, the barrister must be able to do it fearlessly. He has time and time again to choose between his duty to his client and his duty to the court. This is a conflict often difficult to resolve and he should not be under pressure to decide it wrongly. If a barrister is to do his duty fearlessly and independently, he must not be subject to the threat of an action for negligence.[65]

The above position was restated in the Nigeria case of *Saif Ali vs Sydney Mitchell & Co and Others*[66].In effect, it must be said that the administration of justice is made possible by truthful and diligent supporting members of the bar. Meaning that where the bar is not discharging its duties with desired honesty, the bench will surely fail. For example, some dishonest lawyers after charging their normal and usual fees, charge an extra for the judge. Whether that extra reaches the judge or not, it is irrelevant for in such abominable practice, the guilty lawyer has scandalized the unsuspecting client into believing that justice can only be done if the judge is paid a fee.[67]

Corruption

Corruption like cancer has taken the centre stage of Nigeria's democracy and policy, and this has deeply affected the mindset of Nigerians. The development and growth of any nation is only possible when it is able to deal with breakdown of law and order occasioned by corruption. Lawlessness is what gives rise to corruption in a nation. The bane of corruption emanates from human greed, laziness, selfishness, and lack of the well-being of others[68]. The problem Nigeria is experiencing today is as a result of infiltration of corruption in every sector including the judiciary. For example, some greedy judges deal directly with the litigants and some go to the extreme of accepting bribes from both parties to the

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65 Ibid, p.502.

66 [1978]3 All E.R 1033

67 Hon. Justice Oputa, C., "The Independence of the Judiciary, Myth or Realty," in the Judiciary and Democracy Nigeria, (edited), by Prof. Elo Amucheazi and Hon. Justice OlajideOlatawuna, National Orientation Agency, 1998, p. 179

68 Ladan M.T., Enhancing Access to Justice in Criminal Matters: Possible Areas for Reform in Nigeria, p.48.

contest and deciding for one.[69] Again it has become a practice to hire and retain magistrates and judges instead of lawyers. Some judges encourage this practice by emphasizing that,"you may brief any counsel you like, but I am the one to write the judgement"; the message is clear.[70] Thus in the case of *Justice Thomas D. Naron*[71], he was recommended for compulsory retirement by National Judicial Council (NJC) on February 2013 following its findings. Such findings include constant and regular voice calls and exchange of text messages between the judge and one of the lead counsel for one of the parties to the suit in the Osun State Gubernatorial Election Tribunal, contrary to the Code of Conduct for Judicial Officers in Section 292 (1)(b) of the 1999 Constitution.[72]

Further, in the case of *Justice Charles E. Archibong*, in February 2013, the NJC recommended his compulsory retirement as a serving at the Federal High Court, Lagos, following investigations conducted by the Council on series of petitions levelled against him.[73]Some of the allegations were that he dismissed a grievous charge against an accused without taking his plea and refused to release the Certified True Copy of his Ruling to lawyers. He was also accused of issuing bench warrant on some Peoples Democratic Party (PDP) officials for contempt even when the counsel who was directed by the Court to serve them filed an affidavit that he had not been able to serve the contempt application. Archibong was said to have also made unfounded and caustic remarks on professional competence of some Senior Advocates of Nigeria and exhibited glaring procedural irregularities which showed that he did not have a full grasp of the Law and Court procedure.[74] Several other instances of alleged corruption in the judiciary with the active participation of some senior members of the bar are yet to be concluded by the NJC.[75]

Poor Registry

The staff of the registry comprise of the registrar, clerks, confidential secretaries, typist, messengers, bailiffs and cleaners etc., and most of these staff are prone to corruption. At times, case files missing can only to be found later when gratification is given, and sometimes some pages are removed from the record books, or that exhibits are removed, all these are a blot to the administration of justice in courts. It is a matter of common knowledge that the registry is the first

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69 Hon. Justice Oputa, C., "The Independence of the Judiciary, Myth or Realty," op cit. p. 180.

70 Ibid

71 The then of High Court of Justice of Plateau State.

72 Weeding out corrupt judges, www.thenationonlineng.net/new/weeding-out-corrupt-judges/ accessed on 4th January, 2016.

73 Ibid

74 Ibid

75 Chain of fraud: EFCC Unveils Criminal Conspiracy Between Corrupt Judges and Lawyer Rickey Tarfa, www.saharareporters.com/2016/03/02/chain-fraud-efcc-unveils-criminal-conspiracy-between-corrupt-judges-and-lawyer-rickey-tarfa accessed on 5th March, 2016.

place of call by litigants. The registry is almost a public office in the sense that there is unrestricted call to both the litigants and the legal practitioners. Where the registry is manned by inefficient or corrupt staff, who discharge their duties either sloppily or without recourse to the interest of justice generally, the resultant effect is that the judges become overwhelmed with the number of cases before them, thereby leading to delay, which is also a challenge to the administration of justice in the courts.

5. Recommendations and Conclusions

In view of the foregoing challenges, the following recommendations are made as a way forward to building an efficient judiciary in Nigeria.

Ensuring Independence of the Judiciary

An independent judiciary is an indispensable prerequisite for a free society in democratic governance. This is because the judiciary is popularly referred to as the last hope of the common man because it is perceived as the citizen's last line of defence in his unequal combat with people in power. In this wise an independence judiciary means:[76]

(a) Ensuring and impartial decision of cases on the basis of merit and principle rather than on the basis of expediency.
(b) Resisting the pressures of hysteria, fanaticism, tribalism, and ethnicity.
(c) allowing a judge to rise above passion, above public clamour, and above the polities of the moment.
(d) insulating the judge from executive violence, legislative violence and mob hysteria and violence.

Thus, without judicial independence, no judge however brilliant, hardworking, and well prepared by qualities of heart, mind and professional training can give full effect to the enduring values enshrined in our Constitution or even do justice to justice.[77] In view of this, it is recommended that the need for attainment of an independence judiciary is imperative to the Nigerian democratic system.

Strengthening the Diligence of the Bar

The need for a diligence and competent bar is crucial to the bench in the discharge of its roles. Since the bar is an attachment to the court in the interest of justice and fairness, the diligence of the bar must be strengthened in order to pave way for the court to discharge its duties. Thus, on this note, Hon. Chief Justice Orojo, J.O. (as he then was) in pointing out the role of the Bar observed as follows:

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76 Hon. Justice Oputa, C., "The Independence of the Judiciary, Myth or Realty," op cit, p.198.
77 Ibid

> He should be aware of his role that places him among the very few privileged people in an environment, where the vast majority are not only illiterate, but also ignorant, superstitious and poor. His social and traditional environment clogs him and requires him to make a great effort not only to break through but to play his proper role of a social catalyst. Nigerian legal practitioners must be able, not only perform their traditional functions but social change..... they must be committed to law reform to ensure the harmonization of law with the culture of the people... As the watchdog of the people they must through their independence and social commitment to social justice provide the necessary support to sustain an equally independent and fearless judiciary.[78]

In effect, the above assertion is a confirmation of the crucial societal roles played by legal practitioners in the support of a stable judiciary in democratic governance. In a developing country like Nigeria, the attainment of stable infrastructure is not the only major problem. Good governance, exemplified by stable legal and judicial system is also indispensable to the development process. In this regard, it behoves on legal practitioners to identify the short comings in legislation or government action and comment on legislation touching on the liberties of persons and property rights of citizens. By so doing, positive changes are effected by the government and other private stakeholders who are in default. Thus, it will always be correct to say that legal practitioners bring about social changes to the society. In fact, no organization is better placed to discharge this function than the Bar.

Ensuring Diffusion of Powers

The court must ensure that power is diffused by dividing control over the public sphere among various levels and centres of authority. The rule here is that decisions should be taken at the level closest to the citizens because sovereignty resides with the citizens, who delegate power only to solve problems of common concern. Therefore, concentration of powers in few hands is not appreciated in a democracy because benefits will not reach majority of the people. In fact, vesting powers in a few handsoften leads to tyranny .and unbridled dictatorship. Decentralization will also go a long way to eradicate abuse of legal power, and the courts through the strength of their decisions could achieve this by sensitizing all law enforcement and security officials/agencies and all those in power or in authority, that, an abuse of legal power is a direct threat to democracy. It is in fact a betrayal of trust of that power and as such it contravenes the concept of democracy.

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[78] The Nigerian Law Times, Monday 3 Sunday 9 February 1986, at p.15.

Eradication of Corruption

It is well documented that corruption has become endemic in Nigerian, and no sector of the society is free from corruption, including the judiciary. Accordingly, it is suggested that in order to eradicate corruption in Nigeria, emphasis should be placed on transparency, integrity, and accountability in all private and public sectors. In addition, the penal sanctions for corruption must be taken seriously. Indeed, if Nigeria has to strengthen punitive penal measures for corrupt practices in the criminal justice system, there must be enhanced access to public information because presently, a lot of secrecy still pervades government documents and this further underlines the importance of enacting the Freedom of Information Act, 2011.

Adequate Training of the Registry

There is a need for continuous training and retraining of the court registries. Where the staff of the registry are not also adequately trained, they would not perform their jobs effectively. Training at different levels will enhance the understanding and performance of the supporting registry in the administration of justice as desired by democracy.

Conclusion

The role of the court in the sustenance of democracy cannot be over emphasized. Thus, in its totality the court ensures good governance as desired by democracy. Good governance comprises the protection of the rule of law; the protection of human rights; efficient state institutions; transparency and accountability in the management of public affairs; the meaningful participation of all citizens in political process of the country and in decisions affecting their lives; empowerment of women and marginalized groups to become partners in the restructuring of their societies; invigorating civil society and the autonomous mass media; ensuring that those who work non-violently for democratic transformation of the societies are provided the space and resources needed for their tasks, and ; combating corruption. Generally, the courts in the discharge of these roles are expected to balance socio-economic and political development crisis arising between states, local governments and the central government. By so doing, the court will become an essential benefiting factor for the building of democracy in Nigeria. In these respects, the Nigerian courts have greatly improved, however, there is need for more improvement in some areas.